



We also lack jurisdiction to "review, on interlocutory appeal, an order denying qualified immunity 'to the extent that [the order] turns on either an issue of fact or an issue perceived by the trial court to be an issue of fact,'" McKenney v. Mangino, 873 F.3d 75, 80 (1st Cir. 2017) (quoting Stella v. Kelley, 63 F.3d 71, 74 (1st Cir. 1995)); we have jurisdiction to review such a ruling "only insofar as the appeal rests on legal, rather than factual grounds." Cady v. Walsh, 753 F.3d 348, 350 (1st Cir. 2014) (citing Johnson v. Jones, 515 U.S. 304, 313 (1995)). Appellants frame the issue they seek to appeal as a legal question, arguing that the district court's decision is reviewable to the extent it determined that the facts construed in the light most favorable to plaintiff set forth a basis for supervisory liability under the law clearly established in the late 1980s. But while they acknowledge that they must accept plaintiff's version of the facts as true for purposes of summary judgment and appeal, they fail to do so. Instead, appellants argue, as they did below, that it was not clearly established in the late 1980s that Beaupre's after-the-fact referral of plaintiff's report of alleged sexual abuse by a BPD officer report to outside authorities for investigation was inadequate in the circumstances. This argument ignores factual allegations central to plaintiff's claim of supervisory liability, including that Beaupre had received prior reports of sexual abuse and failed to act. Appellants do not argue that the sexual abuse alleged did not amount to a constitutional violation, nor do they argue that it was not clearly established in the late 1980s that a supervisor would be liable for failing to take any action in response to reports of a subordinate's sexual abuse of a minor. Because appellants' "legal" argument appears to ignore or dispute facts central to plaintiff's claim of supervisory liability, they fail to establish a basis for interlocutory appellate jurisdiction. Accordingly, the appeal is dismissed.

By the Court:

Maria R. Hamilton, Clerk

cc:

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